

EXHIBIT A

CAUSE NO. 2020-09590

D.U.R. PROPERTIES, LLC	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
V.	§	
	§	HARRIS COUNTY, TEXAS
AMRISC, INC. and CERTAIN	§	
UNDERWRITERS AT LLOYD'S	§	
LONDON	§	
Defendants	§	80th JUDICIAL DISTRICT

**DEFENDANTS, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON'S
NOTICE OF FILING OF REMOVAL**

Please take notice that Defendants Certain Underwriters at Lloyd's, London filed a Notice of Removal in the Office of the Clerk of the United States District Court for the Southern District of Texas, Houston Division on April 3, 2020. A copy of the U.S. District Court's "Notice of Electronic Filing" and a copy of the Removal are attached hereto as Exhibit A.

Respectfully submitted,

HOLMAN FENWICK WILLAN USA LLP

/s/ Gerard J. Kimmitt, II

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**ATTORNEYS FOR DEFENDANTS
CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON**

CERTIFICATE OF SERVICE

A true and correct copy of Defendant's Notice of Filing of Notice of Removal has been served upon the following on this the 3rd day of April, 2020 via the e-filing system:

Andrew Slania
Jeffrey Raizner
Raizner Slania, LLP
2402 Dunlavy Street
Houston, Texas 77006

Scott A. Shanes
Jeremy R. Wallace
ClarkHill Strasburger
2600 Dallas Parkway, Suite 600
Frisco, TX 75034

/s/ Gerard J. Kimmitt, II

Gerard J. Kimmitt, II
Kristie W. Tobin

EXHIBIT A

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

D.U.R. PROPERTIES, LLC,
Plaintiff

V.

AMRISC, LLC. and
CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON
Defendants

§
§
§
§
§
§
§
§

CASE NO. 20-cv-1196

**DEFENDANTS CERTAIN UNDERWRITERS AT LLOYD'S, LONDON'S
NOTICE OF REMOVAL**

Defendants, Certain Underwriters at Lloyd's, London ("Underwriters") file this Notice of Removal pursuant to 28 U.S.C. §§1441 and 1446(a).¹ Defendants remove this action to the United States District Court for the Southern District of Texas, Houston Division, and in support thereof, respectfully assert the following:

I.
INTRODUCTION AND PROCEDURAL HISTORY

1. This lawsuit stems from a dispute related to insurance coverage allegedly owed to the Plaintiff under Policy No. AMR-56940-01 for allegations stemming from damage to property located at 6100 S. 42nd Street, McAllen, TX 78501 allegedly resulting from an unnamed windstorm that reportedly hit the area on or about September 9, 2018. On February 11, 2020, D.U.R. Properties, LLC ("Plaintiff") filed its Original Petition in the 80th Judicial District Court

¹ Plaintiff is being given notice of the filing of Underwriters' Notice of Removal. *See Exhibit A.*

of Harris County, Texas (Cause No. 2020-09590).² Plaintiff's Petition named Underwriters and AmRisc, LLC ("AmRisc") as defendants in the lawsuit.³

2. Plaintiff's Petition asserts the following causes of action against Underwriters, namely: breach of contract, violations of Texas Deceptive Trade Practices – Consumer Protection Act, §17.41, *et. seq.*, violations of the Texas Insurance Code, §541.060 *et. seq.*, §541.002(1), and §542.055, *et. seq.*, and breach of the duty of good faith and fair dealing.⁴ Plaintiff's Petition also asserts the following causes of action against fraudulently joined party AmRisc: Violations of the Texas Insurance Code, §541.060 *et. seq.* and §541.002(1). Plaintiff's claims are based upon the Defendants' alleged acts and/or omissions related to the investigation and indemnity for the Plaintiff's claim for damages allegedly sustained at the Plaintiff's property located at 6100 S. 42nd Street, McAllen, TX 78501.⁵

3. Plaintiff served Underwriters via its authorized agent, Mendes and Mounts, LLP via certified mail, return receipt requested. Mendes and Mounts, LLP received and signed for receipt of service on March 4, 2020. The return of service has not been filed with the Harris County District Clerk as of the date of filing of this Notice of Removal.

4. Underwriters have timely filed their Original Answer to Plaintiff's Original Petition in Harris County State Court.⁶ Amrisc has also filed a timely Original Answer to Plaintiff's Original Petition.⁷

5. There are no other parties to this lawsuit.

² See **Exhibit B**, Plaintiff's Original Petition, pgs. 6-9.

³ See *id.*

⁴ *Id.*

⁵ *Id.*

⁶ See **Exhibit C** - Certain Underwriters at Lloyd's, London's Original Answer.

⁷ See **Exhibit D** – AmRisc LLC's Original Answer.

II.
TIMING OF REMOVAL

6. Underwriters were served with Plaintiff's Original Petition and received notice of the suit on March 4, 2020. This Notice of Removal is being filed within thirty (30) days of service and receipt by Defendants of a copy of the initial pleading setting forth the claim for relief upon which action is based, and is therefore, timely pursuant to 28 U.S.C. § 1446(b)(1).

III.
VENUE

7. Under 28 U.S.C. §1441(a) and 1446(a), venue is proper in the United States District Court for the Southern District of Texas – Houston Division because the court occupies the district and division in which Plaintiff's lawsuit was filed.

IV.
BASES FOR REMOVAL

8. Removal is proper on the following grounds:

A. Complete Diversity Between the Parties

Federal jurisdiction is based upon complete diversity of citizenship of the parties in accordance with 28 U.S.C. §1332. There is complete diversity among the proper parties at the time of removal. The only proper parties to this lawsuit are Plaintiff and Underwriters which make the removal to federal court proper pursuant to 28 U.S.C. § 1332(a).

Plaintiff's Petition states that Plaintiff is a Texas limited liability company. Based on information and belief, its principal place of business is in Houston, Harris County, Texas.

Policy Number AMR-56940-01 is underwritten by the following syndicates, which are each corporate entities organized and registered in the United Kingdom:

- Syndicate No. 510
- Syndicate No. 2987
- Syndicate No. 33

- Syndicate No. 5000
- Syndicate No. 780
- Syndicate No. 2121
- Syndicate No. 382
- Syndicate No. 1980
- Syndicate No. 510
- Syndicate No. 1969
- Syndicate No. 609
- Syndicate No. 2623
- Syndicate No. 1897
- Syndicate No. 727
- Syndicate No. 623

As corporate entities the syndicates listed above have no individual or other names or members insuring the risk. All syndicates listed above have their principal place of business in the United Kingdom. Therefore, there is complete diversity between the proper parties, as Plaintiff is a citizen of Texas and Defendants are citizens of the United Kingdom.

Plaintiffs joined AmRisc, LLC, a citizen of Texas, solely to defeat diversity jurisdiction. *See Salazar v. Allstate Tex. Lloyd's, Inc.* 455 F.3d 571, 574 (5th Cir. 2006). Pursuant to Texas Insurance Code §§541.154 and 542A.003, Plaintiff issued a statutory notice demand to Underwriters on or about December 5, 2019.⁸ On January 15, 2020, prior to the filing of Plaintiff's Original Petition on February 11, 2020, Underwriters notified Plaintiff's counsel that Underwriters had elected to accept the liability of any adjusters or third party administrator's involved with the adjustment of the relevant claim, which includes AmRisc, LLC.⁹ In addition, Plaintiff has not alleged any cause of action against AmRisc that is not connected with the adjustment of the claim made the basis of this lawsuit. There is no reasonable basis for believing that Plaintiff could recover from AmRisc separate and apart from Underwriters in state court.

⁸ See **Exhibit K** – Plaintiff's Statutory Demand and Underwriters Timely Acceptance of Liability of All Adjusters and Third Party Administrators.

⁹ *Id.*

Larroquette v. Cardinal Health 200, Inc. 466 F.3d 373, 376-377 (5th Cir. 2001).

B. The Amount in Controversy Exceeds \$75,000

The amount in controversy exceeds \$75,000, excluding interest and costs. *See* 28 U.S.C. §1332(a). Plaintiff's Petition states that Plaintiff seeks monetary relief of over \$1,000,000.00.¹⁰ Accordingly, all requirements are met for removal under 28 U.S.C. §1332(a) and §1446(b).

9. Copies of the pleadings and other filings in the state court suit are attached to this notice as required by 28 U.S.C. §1446(a) and the Southern District of Texas Local Rules.¹¹

10. Underwriters will promptly serve a copy of this notice of removal on counsel for Plaintiff and all other parties and will file a copy with the clerk of the Harris County District Court where the suit has been pending.

**V.
CONSENT OF DEFENDANTS**

11. Even though it is not properly joined, AmRisc, LLC has indicated to Underwriters through counsel that it is unopposed to the removal.

**VI.
JURY DEMAND**

12. Plaintiff demanded a jury trial in the state court suit.¹²

**VII.
DOCUMENTS FILED WITH THIS NOTICE**

13. Pursuant to Local Rule 81, Underwriters attaches the following documents to this Notice of Removal:

Exhibit A: Defendants Underwriters' Notice of Filing of Removal filed in state court;

Exhibit B: Plaintiff's Original Petition;

¹⁰ *See Exhibit B*, pg. 2.

¹¹ *See Exhibits A, B, C, D, E, F, G, H, I, and J.*

¹² *See Exhibit B*, Plaintiff's Original Petition at pg. 12.

- Exhibit C:** Certain Underwriters at Lloyd's, London's Original Answer;
- Exhibit D:** AmRisc, LLC's Original Answer
- Exhibit E:** A List of all Counsel of Record, including addressees, telephone numbers, and parties represented in the state court case;
- Exhibit F:** Citation for AmRisc, LLC;
- Exhibit G:** Citation for Certain Underwriters of Lloyd's, London;
- Exhibit H:** Docket Sheet;
- Exhibit I:** Receipt for Fees;
- Exhibit J:** An Index of Documents being filed with the Notice of Removal;

VIII.
PRAYER

WHEREFORE, Defendants Underwriters at Lloyd's of London remove this case from the 80th Judicial District Court, Harris County, Texas to the Southern District of Texas – Houston Division.

Respectfully submitted,

HOLMAN FENWICK WILLAN USA LLP

/s/ Gerard J. Kimmitt

Gerard J. Kimmitt, II (Attorney in charge)

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**ATTORNEYS FOR UNDERWRITERS AT
LLOYD'S OF LONDON**

CERTIFICATE OF SERVICE

A true and correct copy of Defendants' Notice of Removal was filed electronically with the United States District Court for the Southern District of Texas – Houston Division, with notice served via e-file and facsimile on this the 3rd day of April, 2020:

/s/ Gerard J. Kimmitt

Gerard J. Kimmitt, II